



4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Intent to Grant Buy America Waiver to Illinois Department of Transportation to Use Three Non-Domestic Component Parts, in the Incremental Train Control System

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

ACTION: Notice of intent to grant Buy America waiver.

SUMMARY: FRA is issuing this notice to advise the public that it intends to grant the Illinois Department of Transportation (“IDOT”) a waiver from FRA’s Buy America requirement for the use of three component parts that are not produced in the United States for the Incremental Train Control System (“ITCS”). The three component parts included in IDOT’s waiver request are: (1) an ethernet cable; (2) an omni directional antenna; and (3) a router/server combination. FRA believes a waiver is appropriate because off-the-shelf domestically produced components meeting the specific technical and design needs of the ITCS are not available, and custom-designed components are not “reasonably available” given the short timeframe associated with Positive Train Control (PTC) implementation and the low dollar value of the two components as installed on just twenty (20) locomotives, and only one router/server combination needed for the entire project. The total cost of the non-domestically produced components is approximately \$20,000, out of the \$2.5 million cost for the ITCS.

DATES: Written comments on FRA's determination to grant IDOT's Buy America waiver request should be provided to the FRA on or before [INSERT DATE FIFTEEN DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FRA-2012-0033. All electronic submissions must be made to the U.S. Government electronic site at <http://www.regulations.gov>.

Commenters should follow the instructions below for mailed and hand-delivered comments.

(1) Web Site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) Fax: (202) 493-2251;

(3) Mail: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, Room W12-140, Washington, DC, 20590-0001; or

(4) Hand Delivery: Room W12-140 on the first floor of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the "Federal Railroad Administration" and include docket number FRA-2012-0033. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to

<http://www.regulations.gov>. For more information, you may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477), or visit <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Ms. Linda Martin, Senior Attorney-Advisor, FRA Office of Chief Counsel, (202) 493-6062 or via e-mail at Linda.Martin@dot.gov.

SUPPLEMENTARY INFORMATION:

FRA is issuing this notice to advise the public that it intends to grant IDOT's request for a waiver from FRA's Buy America requirement, 49 U.S.C. 24405(a), for the use of three component parts, which are not produced in the United States in the Incremental Train Control System ("ITCS"). Comments may be submitted regarding this waiver request by the methods detailed in this notice. The letter granting IDOT's request provides as follows:

Joseph E. Shacter,

Director, Division of Public and Intermodal Transportation

Illinois Department of Transportation

100 West Randolph Street, Suite 6-600

Chicago, IL 60601

Re: Request for Waiver of Buy America Requirement

Dear Mr. Shacter:

This letter is in response to your September 26, 2012 request that the Illinois Department of Transportation (IDOT) be granted a waiver from the Federal Railroad Administration's (FRA) Buy America provision, at 49 U.S.C. 24405(a)(1), for use in the

Incremental Train Control System (ITCS), of three components that are not produced in the United States. For the following reasons, FRA is granting IDOT's Buy America waiver request.

In December 2010, IDOT and FRA entered into cooperative agreements to allow IDOT to complete the activities necessary to implement high-speed passenger rail service along Union Pacific Railroad's (UP) Chicago to St. Louis rail corridor. The project consists of six tasks encompassing infrastructure improvements, station improvements, acquiring rolling stock, communications, and program management. The overall grant for the Chicago-St. Louis High Speed Rail Corridor development is \$1.142 billion.

The subject of this waiver is a project within the larger Chicago to St. Louis rail corridor development and pertains to the installation of certain signaling improvements on a demonstration segment between Dwight and Joliet, Illinois. The IDOT contracted with Amtrak, UP, and General Electric Train Systems (GETS) to build and supply onboard equipment to retrofit 20 locomotives with the ITCS for this demonstration. The total cost of the ITCS is \$2.5 million.

The ITCS system is manufactured by GETS. The ITCS contains several "end products"—the onboard equipment, the wayside equipment, and Amtrak's Departure Testing Center equipment. This means that the manufactured products, e.g., the cables, routers, air filtration system, power supplies, radios, antennae, displays, and sensors, which are assembled into each end product, are components and must be manufactured in the United States. The ITCS's three end products and the majority of their components are manufactured at various locations in the United States, including Grain Valley and Warrensburg, Missouri; Melbourne, Florida; and Chicago, Illinois. The three components

included in IDOT's Buy America waiver request are: (1) an Ethernet Cable from INET-II Radio to Ethernet Switch; (2) a 900 MHz Omni-directional antenna; and (3) a RuggedComm RX-1000 router/server combination. The total cost of the non-domestically produced components is approximately \$20,000, out of the \$2.5 million cost for the ITCS.

Section 24405(a)(1) authorizes the Secretary of Transportation to obligate grant funds only if the steel, iron, and manufactured goods used in the project are produced in the United States. However, section 24405(a)(2) also permits the Secretary (delegated to the FRA Administrator) to waive the Buy America requirements if the Secretary finds that: (A) applying paragraph one would be inconsistent with the public interest; (B) the steel, iron, and goods manufactured in the United States are not produced in sufficient and reasonably available amount or are not of a satisfactory quality; (C) rolling stock or power train equipment cannot be bought or delivered to the United States within a reasonable time; or (D) including domestic material will increase the cost of the overall project by more than 25 percent.

The FRA believes a waiver is appropriate under 49 U.S.C. 24405(a)(2)(B) because off-the-shelf domestically produced components meeting the specific technical and design needs of the ITCS are not available. Moreover, custom-designed components are not "reasonably available" given the short timeframe associated with positive train control (PTC) implementation, low dollar value of the two components as installed on just 20 locomotives, and only one router/server combination is needed for the entire project. The manufacturer of the ITCS, General Electric Transportation Systems (GETS), estimates that it would cost more than \$1 million and take approximately six months to

one year to accomplish the redesign and testing of parts made by a domestic manufacturer, assuming one would come forth to do so. Additionally, the need to continue the revenue demonstration testing of the ITCS equipment, which is a PTC system that the Rail Safety Improvement Act of 2008 requires be installed on certain rail lines by December 31, 2015, is essential to continued progress toward implementing this important safety technology. The successful demonstration tests were conducted in October 2012, and any further delay could result in additional costs and risk that the PTC system may not be fully tested for implementation prior to the 2015 statutory deadline. The FRA believes that such costs in both time and money make the components not “reasonably available” and, therefore, a waiver is appropriate.

Pursuant to 49 U.S.C. 24405(a)(4), FRA will publish this letter granting IDOT’s request in the *Federal Register* and provide notice of such findings and an opportunity for public comment after which this waiver will become effective. This waiver applies only to the ITCS as installed in the Chicago to St. Louis corridor passenger rail service demonstration segment between Dwight and Joliet and specifically because of the facts and time constraints associated with this limited demonstration project. Any future requests for waivers regarding the ITCS will not be granted without a specific showing that domestic products for that particular project are not reasonably available at the time any subsequent request is made and GETS has made significant good faith efforts to secure all domestic components for the ITCS. The FRA encourages GETS to use the services of the U.S. Department of Commerce’s National Institute for Standards and Technology-Manufacturing Extension Partnership (NIST-MEP). The FRA and NIST-MEP have partnered to increase the domestic manufacturing base for rail rolling stock

and rail infrastructure related products. The FRA can facilitate these discussions, as requested. Questions about this letter can be directed to Linda Martin, Senior Attorney-Advisor, at Linda.Martin@dot.gov or 202-493-6062.

Sincerely,

Joseph C. Szabo

Administrator

This *Federal Register* notice is issued in Washington, DC on February 26, 2013

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Melissa L. Porter
Chief Counsel,
Federal Railroad Administration.

[FR Doc. 2013-04894 Filed 03/01/2013 at 8:45 am; Publication Date: 03/04/2013]